

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DANIEL F. PERDOMO and VICTORIA
SETHUNYA,

Plaintiffs,

v.

TRUPIANO LAW, P.C. and
KIMBERLY J. TRUPIANO,

Defendants.

Case No. 2:09-CV-75-TC

REPORT AND RECOMMENDATION

Before the court is a Motion to Dismiss filed by Defendants Trupiano Law, P.C. and Kimberly J. Trupiano (Docket Entry #12) and a Motion to Amend the Amended Complaint filed by Plaintiffs Daniel F. Perdomo and Victoria Sethunya (Docket Entry #19). Having carefully considered the parties' pleadings and oral arguments, the court recommends that Plaintiffs' Motion to Amend be denied and that Defendants' Motion to Dismiss be granted for lack of jurisdiction.

ANALYSIS

Defendant Kimberly J. Trupiano is an attorney who practices immigration law in the State of Utah. Ms. Trupiano represented both Plaintiffs in separate immigration matters.

In their complaint, Plaintiffs make the following sixteen claims: (1) "Attorney Trupiano does not represent/misrepresents clients"; (2) "Attorney Trupiano is dishonest"; (3) "Attorney Trupiano Creates Assignments for Herself on Clients [sic] Budget"; (4) "Attorney Trupiano does not have the immigration defense experience she advertises online"; (5) "Attorney Trupiano is negligent with Federal deadlines"; (6) "Attorney Trupiano does not corporate with the client"; (7) "Attorney Trupiano does not inform the client on time"; (8) "Attorney Trupiano does not have a billing plan"; (9) "Attorney Trupiano is not punctual"; (10) "Attorney Trupiano gives untrue credentials about herself"; (11) "Attorney Trupiano refuses to share Trust account information with clients"; (12) "Attorney Trupiano refuses to share links for cases she advertises on her website"; (13) "Attorney Trupiano is aggressive towards the client, not the law"; (14) "Attorney Trupiano does not explain the language of the contract"; (15) "Attorney Trupiano puts pressure on clients to sign quickly"; and (16) "Attorney Trupiano knowingly and purposefully confuses clients." (Docket Entry #1.) Despite the large number of Plaintiffs' claims, none of them sets forth a federal cause of action.

Instead, Plaintiffs have not asserted jurisdiction under either 28 U.S.C. § 1331 or 28 U.S.C. § 1332. The court cannot discern a federal question in Plaintiff's complaint; rather, all of the claims appear to be based on negligence and contract law

claims arising under state law. Further, Plaintiffs have not set forth any facts that would justify jurisdiction under diversity of citizenship. Consequently, Plaintiffs' complaint fails to establish federal jurisdiction.

Plaintiffs have filed motions seeking to amend their complaint, but, even construing Plaintiffs' pro se pleadings liberally, neither the pleadings Plaintiffs have submitted, nor the arguments Plaintiffs made before the court, remedy the jurisdictional issue in this case. As a result, after carefully reviewing the parties' pleadings, and having heard oral arguments on this matter, the court concludes that Plaintiffs' complaint must be dismissed for lack of jurisdiction.

RECOMMENDATION

Based on the above analysis, **IT IS RECOMMENDED** that

- (1) Defendants' Motion to Dismiss (Docket Entry #12) be **GRANTED** because the court lacks subject matter jurisdiction;
- (2) Plaintiffs' Motion to Amend the Amended Complaint (Docket Entry #19) be **DENIED**, as it does not cure the complaint's deficiencies; and
- (3) Defendants' request for sanctions (Docket Entry #12) be **DENIED**.

Copies of the foregoing Report and Recommendation are being mailed to the parties who are hereby notified of their right to object to the same. The parties are further notified that they must file any objections to the Report and Recommendation, with

the clerk of the district court, pursuant to 28 U.S.C. § 636(b), within ten (10) days after receiving it. See 28 U.S.C § 636(b)(1). Failure to file objections may constitute a waiver of those objections on subsequent appellate review.

DATED this 20th day of July, 2009.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'Samuel Alba', is written above a horizontal line.

Samuel Alba
United States Magistrate Judge